

100TH CONGRESS  
1ST SESSION

**H. R. 1444**

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IN THE SENATE OF THE UNITED STATES

JUNE 5, 1987

Received; read twice and referred to the Committee on Finance

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**AN ACT**

To amend titles XI, XVIII, and XIX of the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions relating to those programs.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*  
3    **SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF**  
4    **CONTENTS.**

5       (a) **SHORT TITLE.**—This Act may be cited as the  
6    “Medicare and Medicaid Patient and Program Protection Act  
7    of 1987”.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; references in Act; table of contents.
- Sec. 2. Exclusion from medicare and State health care programs.
- Sec. 3. Civil monetary penalties.
- Sec. 4. Criminal penalties for acts involving medicare and State health care programs.
- Sec. 5. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers.
- Sec. 6. Obligation of health care practitioners and providers.
- Sec. 7. Exclusion under the medicaid program.
- Sec. 8. Miscellaneous and conforming amendments.
- Sec. 9. Clarification of medicaid moratorium provisions of Deficit Reduction Act of 1984.
- Sec. 10. Limitation of liability of medicare beneficiaries with respect to services furnished by excluded individuals and entities.
- Sec. 11. Definition of person with ownership or control interest.
- Sec. 12. Conditional approval of renal dialysis facilities.
- Sec. 13. Amendment relating to fraud involving medicare supplemental insurance.
- Sec. 14. Standards for anti-kickback provisions.
- Sec. 15. Effective dates.

9 SEC. 2. EXCLUSION FROM MEDICARE AND STATE HEALTH  
10 CARE PROGRAMS.

11       Section 1128 (42 U.S.C. 1320a-7) is amended to read  
12    as follows:

1 "EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES  
2 FROM PARTICIPATION IN MEDICARE AND STATE  
3 HEALTH CARE PROGRAMS

4 "SEC. 1128. (a) MANDATORY EXCLUSION.—The Sec-  
5 retary shall exclude the following individuals and entities  
6 from participation in any program under title XVIII and  
7 shall direct that the following individuals and entities be ex-  
8 cluded from participation in any State health care program  
9 (as defined in subsection (h)):

10 "(1) CONVICTION OF PROGRAM-RELATED  
11 CRIMES.—Any individual or entity that has been con-  
12 victed of a criminal offense related to the delivery of an  
13 item or service under title XVIII or under any State  
14 health care program.

15 "(2) CONVICTION RELATING TO PATIENT  
16 ABUSE.—Any individual or entity that has been con-  
17 victed, under Federal or State law, of a criminal of-  
18 fense relating to neglect or abuse of patients in connec-  
19 tion with the delivery of a health care item or service.

20 "(b) PERMISSIVE EXCLUSION.—The Secretary may ex-  
21 clude the following individuals and entities from participation  
22 in any program under title XVIII and may direct that the  
23 following individuals and entities be excluded from participa-  
24 tion in any State health care program:

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1                 “(1) CONVICTION RELATING TO FRAUD.—Any  
2 individual or entity that has been convicted, under  
3 Federal or State law, in connection with the delivery  
4 of a health care item or service or with respect to any  
5 act or omission in a program operated by or financed  
6 in whole or in part by any Federal, State, or local gov-  
7 ernment agency, of a criminal offense relating to fraud,  
8 theft, embezzlement, breach of fiduciary responsibility,  
9 or other financial misconduct.

10                 “(2) CONVICTION RELATING TO OBSTRUCTION  
11 OF AN INVESTIGATION.—Any individual or entity that  
12 has been convicted, under Federal or State law, in  
13 connection with the interference with or obstruction of  
14 any investigation into any criminal offense described in  
15 paragraph (1) or in subsection (a).

16                 “(3) CONVICTION RELATING TO CONTROLLED  
17 SUBSTANCE.—Any individual or entity that has been  
18 convicted, under Federal or State law, of a criminal of-  
19 fense relating to the unlawful manufacture, distribution,  
20 prescription, or dispensing of a controlled substance.

21                 “(4) LICENSE REVOCATION OR SUSPENSION.—  
22 Any individual or entity—

23                         “(A) whose license to provide health care  
24 has been revoked or suspended by any State li-  
25 censing authority, or who otherwise lost such a li-

1 cense, for reasons bearing on the individual's or  
2 entity's professional competence, professional per-  
3 formance, or financial integrity, or

4 "“(B) who surrendered such a license while a  
5 formal disciplinary proceeding was pending before  
6 such an authority and the proceeding concerned  
7 the individual's or entity's professional compe-  
8 tence, professional performance, or financial  
9 integrity.

10 ““(5) EXCLUSION OR SUSPENSION UNDER FEDER-  
11 AL OR STATE HEALTH CARE PROGRAM.—Any indi-  
12 vidual or entity which has been suspended or excluded  
13 from participation, or otherwise sanctioned, under—

14 ““(A) any Federal program, including pro-  
15 grams of the Department of Defense or the Veter-  
16 ans' Administration, involving the provision of  
17 health care, or

18 ““(B) a State health care program,  
19 for reasons bearing on the individual's or entity's pro-  
20 fessional competence, professional performance, or  
21 financial integrity.

22 ““(6) CLAIMS FOR EXCESSIVE CHARGES OR UN-  
23 NECESSARY SERVICES AND FAILURE OF CERTAIN OR-  
24 GANIZATIONS TO FURNISH MEDICALLY NECESSARY

1 SERVICES.—Any individual or entity that the Secretary  
2 determines—

3                 “(A) has submitted or caused to be submitted  
4 bills or requests for payment (where such bills or  
5 requests are based on charges or cost) under title  
6 XVIII or a State health care program containing  
7 charges (or, in applicable cases, requests for pay-  
8 ment of costs) for items or services furnished sub-  
9 stantially in excess of such individual’s or entity’s  
10 usual charges (or, in applicable cases, substantial-  
11 ly in excess of such individual’s or entity’s costs)  
12 for such items or services, unless the Secretary  
13 finds there is good cause for such bills or requests  
14 containing such charges or costs;

15                 “(B) has furnished or caused to be furnished  
16 items or services to patients (whether or not eligi-  
17 ble for benefits under title XVIII or under a State  
18 health care program) substantially in excess of the  
19 needs of such patients or of a quality which fails  
20 to meet professionally recognized standards of  
21 health care;

22                 “(C) is—

23                         “(i) a health maintenance organization  
24                             (as defined in section 1903(m)) providing

1                   items and services under a State plan ap-  
2                   proved under title XIX, or

3                   “(ii) an entity furnishing services under  
4                   a waiver approved under section 1915(b)(1),  
5                   and has failed substantially to provide medically  
6                   necessary items and services that are required  
7                   (under law or the contract with the State under  
8                   title XIX) to be provided to individuals covered  
9                   under that plan or waiver, if the failure has ad-  
10                  versely affected (or has a substantial likelihood of  
11                  adversely affecting) these individuals; or

12                  “(D) is an entity providing items and serv-  
13                  ices as an eligible organization under a risk-shar-  
14                  ing contract under section 1876 and has failed  
15                  substantially to provide medically necessary items  
16                  and services that are required (under law or such  
17                  contract) to be provided to individuals covered  
18                  under the risk-sharing contract, if the failure has  
19                  adversely affected (or has a substantial likelihood  
20                  of adversely affecting) these individuals.

21                  “(7) FRAUD, KICKBACKS, AND OTHER PROHIBIT-  
22                  ED ACTIVITIES.—Any individual or entity that the  
23                  Secretary determines has committed an act which is  
24                  described in section 1128A or section 1128B.

1           “(8) ENTITIES CONTROLLED BY A SANCTIONED  
2        INDIVIDUAL.—Any entity with respect to which the  
3        Secretary determines that a person—

4           “(A)(i) with an ownership or control interest  
5        (as defined in section 1124(a)(3)) in that entity, or  
6           “(ii) who is an officer, director, agent, or  
7        managing employee (as defined in section 1126(b))  
8        of that entity—

9        is a person—

10           “(B)(i) who has been convicted of any offense  
11        described in subsection (a) or in paragraph (1), (2),  
12        or (3) of this subsection;

13           “(ii) against whom a civil monetary penalty  
14        has been assessed under section 1128A; or

15           “(iii) who has been excluded from participa-  
16        tion under a program under title XVIII or under  
17        a State health care program.

18           “(9) FAILURE TO DISCLOSE REQUIRED INFOR-  
19        MATION.—Any entity that did not fully and accurately  
20        make any disclosure required by section 1124 or sec-  
21        tion 1126.

22           “(10) FAILURE TO SUPPLY REQUESTED INFOR-  
23        MATION ON SUBCONTRACTORS AND SUPPLIERS.—Any  
24        disclosing entity (as defined in section 1124(a)(2)) that  
25        fails to supply (within such period as may be specified

1 by the Secretary in regulations) upon request specific-  
2 cally addressed to the entity by the Secretary or by the  
3 State agency administering or supervising the adminis-  
4 tration of a State health care program—

5                 “(A) full and complete information as to the  
6 ownership of a subcontractor (as defined by the  
7 Secretary in regulations) with whom the entity  
8 has had, during the previous 12 months, business  
9 transactions in an aggregate amount in excess of  
10 \$25,000, or

11                 “(B) full and complete information as to any  
12 significant business transactions (as defined by the  
13 Secretary in regulations), occurring during the  
14 five-year period ending on the date of such re-  
15 quest, between the entity and any wholly owned  
16 supplier or between the entity and any subcon-  
17 tractor.

18                 “(11) FAILURE TO SUPPLY PAYMENT INFORMA-  
19 TION.—Any individual or entity furnishing items or  
20 services for which payment may be made under title  
21 XVIII or a State health care program that fails to pro-  
22 vide such information as the Secretary or the appropri-  
23 ate State agency finds necessary to determine whether  
24 such payments are or were due and the amounts there-  
25 of, or has refused to permit such examination of its

1 records by or on behalf of the Secretary or that agency  
2 as may be necessary to verify such information.

3           “(12) FAILURE TO GRANT IMMEDIATE  
4 ACCESS.—Any individual or entity that fails to grant  
5 immediate access, upon reasonable request (as defined  
6 by the Secretary in regulations) to any of the  
7 following:

8               “(A) To the Secretary, or to the agency used  
9 by the Secretary, for the purpose specified in the  
10 first sentence of section 1864(a) (relating to com-  
11 pliance with conditions of participation or pay-  
12 ment).

13               “(B) To the Secretary or the State agency,  
14 to perform the reviews and surveys required  
15 under State plans under paragraphs (26), (31),  
16 and (33) of section 1902(a) and under section  
17 1903(g).

18               “(C) To the Inspector General of the De-  
19 partment of Health and Human Services, for the  
20 purpose of reviewing records, documents, and  
21 other data necessary to the performance of the  
22 statutory functions of the Inspector General.

23               “(D) To a State medicaid fraud control unit  
24 (as defined in section 1903(q)), for the purpose of  
25 conducting activities described in that section.

1           “(13) FAILURE TO TAKE CORRECTIVE  
2 ACTION.—Any hospital that fails to comply substan-  
3 tially with a corrective action required under section  
4 1886(f)(2)(B).

5           “(14) DEFAULT ON HEALTH EDUCATION LOAN  
6 OR SCHOLARSHIP OBLIGATIONS.—Any individual who  
7 the Secretary determines is in default on repayments of  
8 scholarship obligations or loans in connection with  
9 health professions education made or secured, in whole  
10 or in part, by the Secretary and with respect to whom  
11 the Secretary has taken all reasonable steps available  
12 to the Secretary to secure repayment of such obliga-  
13 tions or loans, except that (A) the Secretary shall not  
14 exclude pursuant to this paragraph a physician who is  
15 the sole community physician or sole source of essen-  
16 tial specialized services in a community if a State re-  
17 quested that the physician not be excluded, and (B) the  
18 Secretary shall take into account, in determining  
19 whether to exclude any other physician pursuant to  
20 this paragraph, access of beneficiaries to physician  
21 services for which payment may be made under title  
22 XVIII or XIX.

23           “(c) NOTICE, EFFECTIVE DATE, AND PERIOD OF EX-  
24 CLUSION.—(1) An exclusion under this section or under sec-  
25 tion 1128A shall be effective at such time and upon such

1 reasonable notice to the public and to the individual or entity  
2 excluded as may be specified in regulations consistent with  
3 paragraph (2).

4       “(2)(A) Except as provided in subparagraph (B), such an  
5 exclusion shall be effective with respect to services furnished  
6 to an individual on or after the effective date of the exclusion.

7       “(B) Unless the Secretary determines that the health  
8 and safety of individuals receiving services warrants the ex-  
9 clusion taking effect earlier, an exclusion shall not apply to  
10 payments made under title XVIII or under a State health  
11 care program for—

12           “(i) inpatient institutional services furnished to an  
13 individual who was admitted to such institution before  
14 the date of the exclusion, or

15           “(ii) home health services and hospice care fur-  
16 nished to an individual under a plan of care established  
17 before the date of the exclusion,

18 until the passage of 30 days after the effective date of the  
19 exclusion.

20       “(3)(A) The Secretary shall specify, in the notice of ex-  
21 clusion under paragraph (1) and the written notice under sec-  
22 tion 1128A, the minimum period (or, in the case of an exclu-  
23 sion of an individual under subsection (b)(12), the period) of  
24 the exclusion.

1       “(B) In the case of an exclusion under subsection (a),  
2 the minimum period of exclusion shall be not less than five  
3 years, except that, upon the request of a State, the Secretary  
4 may waive the exclusion under subsection (a)(1) in the case of  
5 an individual or entity that is the sole community physician  
6 or sole source of essential specialized services in a communi-  
7 ty. The Secretary’s decision whether to waive the exclusion  
8 shall not be reviewable.

9       “(C) In the case of an exclusion of an individual under  
10 subsection (b)(12), the period of the exclusion shall be equal  
11 to the sum of—

12           “(i) the length of the period in which the individ-  
13 ual failed to grant the immediate access described in  
14 that subsection, and

15           “(ii) an additional period, not to exceed 90 days,  
16 set by the Secretary.

17       “(d) NOTICE TO STATE AGENCIES AND EXCLUSION  
18 UNDER STATE HEALTH CARE PROGRAMS.—(1) Subject to  
19 paragraph (3), the Secretary shall exercise the authority  
20 under subsection (b) in a manner that results in an individ-  
21 ual’s or entity’s exclusion from all the programs under title  
22 XVIII and all the State health care programs in which the  
23 individual or entity may otherwise participate.

24       “(2) The Secretary shall promptly notify each appropri-  
25 ate State agency administering or supervising the administra-

1 tion of each State health care program (and, in the case of an  
2 exclusion effected pursuant to subsection (a) and to which  
3 section 304(a)(5) of the Controlled Substances Act may  
4 apply, the Attorney General)—

5           “(A) of the fact and circumstances of each exclu-  
6 sion effected against an individual or entity under this  
7 section or section 1128A, and

8           “(B) of the period (described in paragraph (3)) for  
9 which the State agency is directed to exclude the indi-  
10 vidual or entity from participation in the State health  
11 care program.

12           “(3)(A) Except as provided in subparagraph (B), the  
13 period of the exclusion under a State health care program  
14 under paragraph (2) shall be the same as any period of exclu-  
15 sion under a program under title XVIII.

16           “(B) The Secretary may waive an individual's or enti-  
17 ty's exclusion under a State health care program under para-  
18 graph (2) if the Secretary receives and approves a request for  
19 the waiver with respect to the individual or entity from the  
20 State agency administering or supervising the administration  
21 of the program.

22           “(e) NOTICE TO STATE LICENSING AGENCIES.—The  
23 Secretary shall—

24           “(1) promptly notify the appropriate State or local  
25           agency or authority having responsibility for the licens-

1       ing or certification of an individual or entity excluded  
2       (or directed to be excluded) from participation under  
3       this section or section 1128A, of the fact and circum-  
4       stances of the exclusion,

5           “(2) request that appropriate investigations be  
6       made and sanctions invoked in accordance with appli-  
7       cable State law and policy, and

8           “(3) request that the State or local agency or au-  
9       thority keep the Secretary and the Inspector General  
10      of the Department of Health and Human Services fully  
11      and currently informed with respect to any actions  
12      taken in response to the request.

13       “(f) NOTICE, HEARING, AND JUDICIAL REVIEW.—(1)  
14 Any individual or entity that is excluded (or directed to be  
15 excluded) from participation under this section is entitled to  
16 reasonable notice and opportunity for a hearing thereon by  
17 the Secretary to the same extent as is provided in section  
18 205(b), and to judicial review of the Secretary’s final decision  
19 after such hearing as is provided in section 205(g).

20       “(2) The provisions of section 205(h) shall apply with  
21 respect to this section and sections 1128A and 1156 to the  
22 same extent as it is applicable with respect to title II.

23       “(g) APPLICATION FOR TERMINATION OF EXCLU-  
24 SION.—(1) An individual or entity excluded (or directed to be  
25 excluded) from participation under this section or section

1 1128A may apply to the Secretary, in the manner specified  
2 by the Secretary in regulations and at the end of the mini-  
3 mum period of exclusion provided under subsection (c)(3) and  
4 at such other times as the Secretary may provide, for termi-  
5 nation of the exclusion effected under this section or section  
6 1128A.

7       “(2) The Secretary may terminate the exclusion if the  
8 Secretary determines, on the basis of the conduct of the ap-  
9 plicant which occurred after the date of the notice of exclu-  
10 sion or which was unknown to the Secretary at the time of  
11 the exclusion, that—

12           “(A) there is no basis under subsection (a) or (b)  
13 or section 1128A(a) for a continuation of the exclusion,  
14 and

15           “(B) there are reasonable assurances that the  
16 types of actions which formed the basis for the original  
17 exclusion have not recurred and will not recur.

18       “(3) The Secretary shall promptly notify each appropri-  
19 ate State agency administering or supervising the administra-  
20 tion of each State health care program (and, in the case of an  
21 exclusion effected pursuant to subsection (a) and to which  
22 section 304(a)(5) of the Controlled Substances Act may  
23 apply, the Attorney General) of the fact and circumstances of  
24 each termination of exclusion made under this subsection.

1       “(h) DEFINITION OF STATE HEALTH CARE PRO-  
2    GRAM.—For purposes of this section and sections 1128A and  
3    1128B, the term ‘State health care program’ means—

4           “(1) a State plan approved under title XIX,  
5           “(2) any program receiving funds under title V or  
6    from an allotment to a State under such title, or  
7           “(3) any program receiving funds under title XX  
8    or from an allotment to a State under such title.

9       “(i) CONVICTED DEFINED.—For purposes of subsec-  
10   tions (a) and (b), a physician or other individual is considered  
11   to have been ‘convicted’ of a criminal offense—

12           “(1) when a judgment of conviction has been en-  
13   tered against the physician or individual by a Federal,  
14   State, or local court, regardless of whether there is an  
15   appeal pending or whether the judgment of conviction  
16   or other record relating to criminal conduct has been  
17   expunged;

18           “(2) when there has been a finding of guilt  
19   against the physician or individual by a Federal, State,  
20   or local court;

21           “(3) when a plea of guilty or nolo contendere by  
22   the physician or individual has been accepted by a  
23   Federal, State, or local court; or

1               “(4) when the physician or individual has entered  
2               into participation in a first offender or other program  
3               where judgment of conviction has been withheld.”.

4 **SEC. 3. CIVIL MONETARY PENALTIES.**

5               (a) **GROUND FOR IMPOSITION.**—(1) Section  
6 1128A(a)(1) (42 U.S.C. 1320a-7a(a)(1)) is amended by  
7 striking “the Secretary determines” and all that follows  
8 through “; or” and inserting “the Secretary determines—

9                       “(A) is for a medical or other item or service  
10                  that the person knows or has reason to know was  
11                  not provided as claimed,

12                       “(B) is for a medical or other item or service  
13                  and the person knows or has reason to know the  
14                  claim is false or fraudulent,

15                       “(C) is presented for a physician’s service (or  
16                  an item or service incident to a physician’s serv-  
17                  ice) by a person who knows or has reason to  
18                  know that the individual who furnished (or super-  
19                  vised the furnishing of) the service—

20                               “(i) was not licensed as a physician,

21                               “(ii) was licensed as a physician, but  
22                  such license had been obtained through a  
23                  misrepresentation of material fact (including  
24                  cheating on an examination required for li-  
25                  censing), or

1                         “(iii) represented to the patient at the  
2                         time the service was furnished that the phy-  
3                         sician was certified in a medical specialty by  
4                         a medical specialty board when the individ-  
5                         ual was not so certified, or

6                         “(D) is for a medical or other item or service  
7                         furnished during a period in which the person was  
8                         excluded under the program under which the  
9                         claim was made pursuant to a determination by  
10                         the Secretary under this section or under section  
11                         1128, 1156, 1160(b) (as in effect on September 2,  
12                         1982), 1862(d) (as in effect on the date of the en-  
13                         actment of the Medicare and Medicaid Patient and  
14                         Program Protection Act of 1987), or 1866(b);  
15                         or”.

16                         (2) Section 1128A(a)(2) is amended—

17                         (A) in subparagraph (B) by inserting “(or other re-  
18                         quirement of a State plan under title XIX)” after  
19                         “State agency”, and

20                         (B) by inserting at the end “or (D) an agreement  
21                         pursuant to section 1866(a)(1)(G), or”.

22                         (3) Subsection (a) of section 1128A is further  
23                         amended—

1 (A) by inserting after paragraph (2) and before the  
2 end matter of such subsection the following new  
3 paragraph:

4               “(3) gives to any person, with respect to coverage  
5               under title XVIII of inpatient hospital services subject  
6               to the provisions of section 1886, information that he  
7               knows or has reason to know is false or misleading,  
8               and that could reasonably be expected to influence the  
9               decision when to discharge such person or another in-  
10              dividual from the hospital:”, and

11 (B) in the matter following paragraph (3)—

17 (ii) by adding at the end thereof the following  
18 new sentence: "In addition the Secretary may  
19 make a determination in the same proceeding to  
20 exclude the person from participation in the pro-  
21 grams under title XVIII and to direct the appro-  
22 priate State agency to exclude the person from  
23 participation in any State health care program.".

24 (b) STATUTE OF LIMITATION ON ACTIONS.—Subsec-  
25 tion (c)(1) of section 1128A (as redesignated by section

1 9313(c)(1)(D) of the Omnibus Budget Reconciliation Act of  
2 1986) is amended by adding at the end the following new  
3 sentences: “The Secretary may not initiate an action under  
4 this section with respect to any claim later than six years  
5 after the date the claim was presented. The Secretary may  
6 initiate an action under this section by serving notice of the  
7 action in any manner authorized by rule 4 of the Federal  
8 Rules of Civil Procedure.”.

9 (c) CONFORMING AMENDMENT.—Subsections (c), (d),  
10 (g), and (h) of section 1128A are each amended by striking  
11 “penalty or assessment” and inserting “penalty, assessment,  
12 or exclusion” each place it appears.

13 (d) PRO-RATED PAYMENT OF RECOVERIES TO STATE  
14 AGENCIES.—Subsection (f)(1)(A) of section 1128A is amend-  
15 ed by striking “equal to the State’s share of the amount paid  
16 by the State agency” and inserting “bearing the same pro-  
17 portion to the total amount recovered as the State’s share of  
18 the amount paid by the State agency for such claim bears to  
19 the total amount paid”.

20 (e) NOTICE TO STATE AGENCIES.—Subsection (h) of  
21 section 1128A is further amended by inserting “the appropri-  
22 ate State agency or agencies administering or supervising the  
23 administration of State health care programs (as defined in  
24 section 1128(h)),” after “professional organization.”.

4       “(j) The provisions of subsections (d) and (e) of section  
5 205 shall apply with respect to this section to the same  
6 extent as they are applicable with respect to title II. The  
7 Secretary may delegate the authority granted by section  
8 205(d) (as made applicable to this section) to the Inspector  
9 General of the Department of Health and Human Services  
10 for purposes of any investigation under this section.

11       “(k) Whenever the Secretary has reason to believe that  
12 any person has engaged, is engaging, or is about to engage in  
13 any activity which makes the person subject to a civil mone-  
14 tary penalty under this section, the Secretary may bring an  
15 action in an appropriate district court of the United States  
16 (or, if applicable, a United States court of any territory) to  
17 enjoin such activity, or to enjoin the person from concealing,  
18 removing, encumbering, or disposing of assets which may be  
19 required in order to pay a civil monetary penalty if any such  
20 penalty were to be imposed or to seek other appropriate  
21 relief.”.

22 SEC. 4. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDI-  
23 CARE AND STATE HEALTH CARE PROGRAMS.

24 (a) TECHNICAL AMENDMENTS.—Section 1909 (42  
25 U.S.C. 1396h) is amended—

(1) by amending the heading to read as follows:

**“CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE  
OR STATE HEALTH CARE PROGRAMS”;**

(2) in subsection (a)(1), by striking “a State plan approved under this title” and inserting “a program under title XVIII or a State health care program (as defined in section 1128(h))”;

(3) in the matter in subsection (a) following paragraph (4), by striking "this title" the first place it appears and inserting "the program":

(4) in the last sentence of subsection (a), by striking “this title” the first place it appears and inserting “title XIX”, and by striking “this title” the second place it appears and inserting “that title”:

(5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and (3)(A) of subsection (b), by striking "this title" and inserting "title XVIII or a State health care program" each place it appears:

(6) in subsection (b)(3) —

(A) by striking “and” at the end of subparagraph (A).

(B) by striking the period at the end of subparagraph (B) and inserting “; and”, and

(C) by adding at the end the following:

“(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing

1 agent for a group of individuals or entities who are fur-  
2 nishing services reimbursed under title XVIII or a  
3 State health care program if—

4                 “(i) the person has a written contract, with  
5 each such individual or entity, which specifies the  
6 amount to be paid the person, which amount may  
7 be a fixed amount or a fixed percentage of the  
8 value of the purchases made by each such individ-  
9 ual or entity under the contract, and

10                 “(ii) in the case of an entity that is a provid-  
11 er of services (as defined in section 1861(u)), the  
12 person discloses (in such form and manner as the  
13 Secretary requires) to the entity and, upon re-  
14 quest, to the Secretary the amount received from  
15 each such vendor with respect to purchases made  
16 by or on behalf of the entity.”;

17                 (7) in subsection (c), by striking “or home health  
18 agency (as those terms are employed in this title)” and  
19 inserting “home health agency, or other entity for  
20 which certification is required under title XVIII or a  
21 State health care program”; and

22                 (8) in subsection (d), by striking “this title” and  
23 inserting “title XIX” each place it appears.

1       (b) CRIMINAL PENALTIES FOR PHYSICIAN MISREP-  
2 SENTATIONS.—Subsection (a) of such section is further  
3 amended—

4               (1) by striking “or” at the end of paragraph (3),  
5               (2) by inserting “or” at the end of paragraph (4),  
6               and

7               (3) by inserting after paragraph (4) the following  
8 new paragraph:

9               “(5) presents or causes to be presented a claim for  
10               a physician’s service for which payment may be made  
11               under a program under title XVIII or a State health  
12               care program and knows that the individual who fur-  
13               nished the service was not licensed as a physician.”.

14       (c) REDESIGNATION OF SECTION 1877(d) AS SECTION  
15 1128B(e).—Subsection (d) of section 1877 (42 U.S.C.  
16 1395nn) is redesignated as subsection (e) and is transferred  
17 and inserted in section 1909 at the end thereof.

18       (d) REDESIGNATION OF SECTION 1909 AS SECTION  
19 1128B.—Section 1909, as amended by subsections (a), (b),  
20 and (c) of this section, is redesignated as section 1128B and  
21 is transferred to title XI and inserted immediately after sec-  
22 tion 1128A.

23       (e) REPEAL.—Section 1877 (other than subsection (d)  
24 thereof which was transferred under subsection (c) of this sec-  
25 tion) is repealed.

1 SEC. 5. INFORMATION CONCERNING SANCTIONS TAKEN BY  
2 STATE LICENSING AUTHORITIES AGAINST  
3 HEALTH CARE PRACTITIONERS AND PRO-  
4 VIDERS.

5 (a) MEDICAID PLAN REQUIREMENT.—Section 1902(a)  
6 (42 U.S.C. 1396a(a)) is amended—

7 (1) by striking “and” at the end of paragraph  
8 (46),

9 (2) by striking the period at the end of the para-  
10 graph (47) added by section 9407(a) of the Omnibus  
11 Budget Reconciliation Act of 1986 and inserting a  
12 semicolon and transferring and inserting such para-  
13 graph after paragraph (46),

14 (3) by striking the period at the end of the para-  
15 graph (47) added by section 11005(b) of the Anti-Drug  
16 Abuse Act of 1986 and inserting “; and”, by redesign-  
17 nating such paragraph as paragraph (48), and by trans-  
18 ferring and inserting such paragraph after paragraph  
19 (47), and

20 (4) by inserting after paragraph (48) the following  
21 new paragraph:

22 “(49) provide that the State will provide informa-  
23 tion and access to certain information respecting sanc-  
24 tions taken against health care practitioners and pro-  
25 viders by State licensing authorities in accordance with  
26 section 1921.”.

1       (b) INFORMATION REQUIRED.—Title XIX is amended  
2 by redesignating section 1921 as section 1922 and inserting  
3 after section 1920 the following new section:

4       “INFORMATION CONCERNING SANCTIONS TAKEN BY STATE  
5           LICENSING AUTHORITIES AGAINST HEALTH CARE  
6           PRACTITIONERS AND PROVIDERS

7       “SEC. 1921. (a) INFORMATION REPORTING REQUIRE-  
8 MENT.—The requirement referred to in section 1902(a)(49) is  
9 that the State must provide for the following:

10           “(1) INFORMATION REPORTING SYSTEM.—The  
11       State must have in effect a system of reporting the fol-  
12       lowing information with respect to formal proceedings  
13       (as defined by the Secretary in regulations) concluded  
14       against a health care practitioner or entity by any au-  
15       thority of the State (or of a political subdivision there-  
16       of) responsible for the licensing of health care practi-  
17       tioners or entities:

18           “(A) Any adverse action taken by such li-  
19       censing authority as a result of the proceeding, in-  
20       cluding any revocation or suspension of a license  
21       (and the length of any such suspension), retri-  
22       mand, censure, or probation.

23           “(B) Any dismissal or closure of the proceed-  
24       ings by reason of the practitioner or entity surren-  
25       dering the license or leaving the State or  
26       jurisdiction.

1                         “(C) Any other loss of the license of the  
2                         practitioner or entity, whether by operation of  
3                         law, voluntary surrender, or otherwise.

4                         “(2) ACCESS TO DOCUMENTS.—The State must  
5                         provide the Secretary (or an entity designated by the  
6                         Secretary) with access to such documents of the au-  
7                         thority described in paragraph (1) as may be necessary  
8                         for the Secretary to determine the facts and circum-  
9                         stances concerning the actions and determinations de-  
10                         scribed in such paragraph for the purpose of carrying  
11                         out this Act.

12                         “(b) FORM OF INFORMATION.—The information de-  
13                         scribed in subsection (a)(1) shall be provided to the Secretary  
14                         (or to an appropriate private or public agency, under suitable  
15                         arrangements made by the Secretary with respect to receipt,  
16                         storage, protection of confidentiality, and dissemination of in-  
17                         formation) in such a form and manner as the Secretary deter-  
18                         mines to be appropriate in order to provide for activities of  
19                         the Secretary under this Act and in order to provide, directly  
20                         or through suitable arrangements made by the Secretary,  
21                         information—

22                         “(1) to agencies administering Federal health care  
23                         programs,

24                         “(2) to licensing authorities described in subsec-  
25                         tion (a)(1),

1               “(3) to State agencies administering or supervis-  
2       ing the administration of State health care programs  
3       (as defined in section 1128(h)),

4               “(4) to utilization and quality control peer review  
5       organizations described in part B of title XI,

6               “(5) to State medicaid fraud control units (as de-  
7       fined in section 1903(q)),

8               “(6) to hospitals and other health care entities (as  
9       defined in section 431 of the Health Care Quality Im-  
10      provement Act of 1986), with respect to physicians or  
11      other licensed health care practitioners that have en-  
12      tered (or may be entering) into an employment or affili-  
13      ation relationship with, or have applied for clinical  
14      privileges or appointments to the medical staff of, such  
15      hospitals or other health care entities (and such infor-  
16      mation shall be deemed to be disclosed pursuant to sec-  
17      tion 427 of, and be subject to the provisions of, that  
18      Act), and

19               “(7) to the Attorney General and such other law  
20      enforcement officials as the Secretary deems appropri-  
21      ate, and

22               “(8) upon request, to the Comptroller General,  
23      in order for such authorities to determine the fitness of indi-  
24      viduals to provide health care services, to protect the health  
25      and safety of individuals receiving health care through such

1 programs, and to protect the fiscal integrity of such  
2 programs.

3       “(c) CONFIDENTIALITY OF INFORMATION PROVID-  
4 ED.—The Secretary shall provide for suitable safeguards for  
5 the confidentiality of such of the information furnished under  
6 subsection (a). Nothing in this subsection shall prevent the  
7 disclosure of such information by a party which is otherwise  
8 authorized, under applicable State law, to make such  
9 disclosure.

10       “(d) APPROPRIATE COORDINATION.—The Secretary  
11 shall provide for the maximum appropriate coordination in  
12 the implementation of subsection (a) of this section and sec-  
13 tion 422 of the Health Care Quality Improvement Act of  
14 1986.”.

15 **SEC. 6. OBLIGATION OF HEALTH CARE PRACTITIONERS AND**  
16 **PROVIDERS.**

17       Section 1156 (42 U.S.C. 1320c-5) is amended—  
18           (1) by striking “title XVIII” and “such title” in  
19 subsection (a) and inserting “this Act” in each in-  
20 stance, and

21           (2) by striking “title XVIII” in subsection (b) and  
22 inserting “this Act” each place it appears.

23 **SEC. 7. EXCLUSION UNDER THE MEDICAID PROGRAM.**

24       Section 1902 (42 U.S.C. 1396b) is amended by redesign-  
25 nating the subsection (l) added by section 3(b) of the Employ-

1 ment Opportunities for Disabled Americans Act as subsection  
2 (o) and by inserting after such subsection the following new  
3 subsection:

4       “(p)(1) In addition to any other authority, a State may  
5 exclude any individual or entity for purposes of participating  
6 under the State plan under this title for any reason for which  
7 the Secretary could exclude the individual or entity from par-  
8 ticipation in a program under title XVIII under section  
9 1128, 1128A, or 1866(b)(2).

10       “(2) In order for a State to receive payments for medi-  
11 cal assistance under section 1903(a), with respect to pay-  
12 ments the State makes to a health maintenance organization  
13 (as defined in section 1903(m)) or to an entity furnishing  
14 services under a waiver approved under section 1915(b)(1),  
15 the State must provide that it will exclude from participation,  
16 as such an organization or entity, any organization or entity  
17 that—

18           “(A) could be excluded under section 1128(b)(8)  
19 (relating to owners and managing employees who have  
20 been convicted of certain crimes or received other  
21 sanctions), or

22           “(B) has, directly or indirectly, a substantial con-  
23 tractual relationship (as defined by the Secretary) with  
24 an individual or entity that is described in section  
25 1128(b)(8)(B).

1       “(3) As used in this subsection, the term ‘exclude’ in-  
2 cludes the refusal to enter into or renew a participation  
3 agreement or the termination of such an agreement.”.

4 **SEC. 8. MISCELLANEOUS AND CONFORMING AMENDMENTS.**

5       (a) **MATERNAL AND CHILD HEALTH PROGRAM.**—Sec-  
6 tion 504(b) (42 U.S.C. 704(b)) is amended—

7               (1) by striking “or” at the end of paragraph (4),  
8               (2) by striking the period at the end of paragraph  
9               (5) and inserting “; or”, and

10               (3) by adding at the end thereof the following new  
11 paragraph:

12               “(6) payment for any item or service (other than  
13 an emergency item or service) furnished—

14               “(A) by an individual or entity excluded from  
15 participation in the program under this title pursu-  
16 ant to section 1128 or section 1128A, or

17               “(B) at the medical direction or on the pre-  
18 scription of a physician during the period when  
19 the physician is excluded pursuant to section 1128  
20 or section 1128A from participation in the pro-  
21 gram under this title.”.

22       (b) **DISCLOSURE REQUIREMENTS.**—(1) Subsection (a)  
23 of section 1126 (42 U.S.C. 1320a-5) is amended—

24               (A) in the first sentence, by striking “or other in-  
25 stitution” and all that follows through the period at the

1 end and inserting “or other entity (other than an individual practitioner or group of practitioners) shall be  
2 required to disclose to the Secretary or to the appropriate State agency the name of any person that is a  
3 person described in subparagraphs (A) and (B) of section 1128(b)(8).”, and

7 (B) in the second sentence, by striking “institution,  
8 organization, or agency” and inserting “entity”.

9 (2) Subsection (b) of such section is amended by striking  
10 “institution, organization, or agency” and inserting “entity”  
11 each place it appears.

12 (c) MEDICARE PAYMENTS.—(1) Section 1862 (42  
13 U.S.C. 1395y) is amended—

14 (A) by striking subsection (d), and

15 (B) by amending subsection (e) to read as follows:  
16 “(e) No payment may be made under this title with respect to any item or service (other than an emergency item or  
17 service) furnished—

19 “(1) by an individual or entity during the period when such individual or entity is excluded pursuant to  
20 section 1128 or section 1128A from participation in  
21 the program under this title; or

23 “(2) at the medical direction or on the prescription of a physician during the period when he is excluded pursuant to section 1128 or section 1128A from

1 participation in the program under this title and when  
2 the person furnishing such item or service knew or had  
3 reason to know of the exclusion (after a reasonable  
4 time period after reasonable notice has been furnished  
5 to the person).”.

6 (2) Section 1842(j) (42 U.S.C. 1395u(j)) is amended—

7 (A) in paragraph (2)—

8 (i) by amending subparagraph (A) to read as  
9 follows:

10 “(A) excluding a physician from participation in  
11 the programs under this title for a period not to exceed  
12 5 years, in accordance with the procedures of subsec-  
13 tions (c), (f), and (g) of section 1128, or”, and

14 (ii) by striking “barred from participation in  
15 the program” in the second sentence and inserting  
16 “excluded from participation in the programs”;  
17 and

18 (B) by striking “bar” in paragraph (3)(A) and in-  
19 serting “exclude”.

20 (3) Section 1862(h)(4) (42 U.S.C. 1395y(h)(4)) is  
21 amended by striking “paragraphs (2) and (3) of subsection  
22 (d)” and inserting “subsections (c), (f), and (g) of section  
23 1128”.

24 (4) Paragraph (3) of section 1886(f) (42 U.S.C.  
25 1395ww(f)) is amended to read as follows:

1       “(3) The provisions of subsections (c) through (g) of sec-  
2 tion 1128 shall apply to determinations made under para-  
3 graph (2) in the same manner as they apply to exclusions  
4 effected under section 1128(b)(13).”.

5       **(d) TERMINATION OF PROVIDER AGREEMENTS UNDER**  
6 **MEDICARE.**—Section 1866 (42 U.S.C. 1395cc) is  
7 amended—

8           (1) by striking paragraph (3) of subsection (a);  
9           (2) by amending subsection (b) to read as follows:  
10           “(b)(1) A provider of services may terminate an agree-  
11 ment with the Secretary under this section at such time and  
12 upon such notice to the Secretary and the public as may be  
13 provided in regulations, except that notice of more than six  
14 months shall not be required.

15           “(2) The Secretary may refuse to enter into an agree-  
16 ment under this section or, upon such reasonable notice to  
17 the provider and the public as may be specified in regula-  
18 tions, may refuse to renew or may terminate such an agree-  
19 ment after the Secretary—

20           “(A) has determined that the provider fails to  
21 comply substantially with the provisions of the agree-  
22 ment, with the provisions of this title and regulations  
23 thereunder, or with a corrective action required under  
24 section 1886(f)(2)(B),

1               “(B) has determined that the provider fails sub-  
2       stantially to meet the applicable provisions of section  
3       1861, or

4               “(C) has excluded the provider from participation  
5       in a program under this title pursuant to section 1128  
6       or section 1128A.

7               “(3) A termination of an agreement or a refusal to  
8       renew an agreement under this subsection shall be effective  
9       on the same date and in the same manner as an exclusion  
10      from participation under the programs under this title be-  
11      comes effective under section 1128(c).”;

12               (3) in paragraphs (1) and (3) of subsection (c), by  
13       striking “an agreement filed under this title by a pro-  
14       vider of services has been terminated by the Secre-  
15       tary” and inserting “the Secretary has terminated or  
16       has refused to renew an agreement under this title  
17       with a provider of services”;

18               (4) by inserting “or nonrenewal” in subsection (c)  
19       after “termination” each place it appears; and

20               (5) by adding at the end the following new sub-  
21       section:

22               “(h)(1) Except as provided in paragraph (2), an institu-  
23       tion or agency dissatisfied with a determination by the Secre-  
24       tary that it is not a provider of services or with a determina-  
25       tion described in subsection (b)(2) shall be entitled to a hear-

1 ing thereon by the Secretary (after reasonable notice) to the  
2 same extent as is provided in section 205(b), and to judicial  
3 review of the Secretary's final decision after such hearing as  
4 is provided in section 205(g).

5       “(2) An institution or agency is not entitled to separate  
6 notice and opportunity for a hearing under both section 1128  
7 and this section with respect to a determination or determina-  
8 tions based on the same underlying facts and issues.”.

9       (e) CONFORMING AMENDMENT.—Section 1869 (42  
10 U.S.C. 1395ff) is amended by striking subsection (c).

11       (f) MEDICAID PLAN REVISIONS.—Section 1902(a) (42  
12 U.S.C. 1396b(a)) is amended—

13               (1) in paragraph (23), by inserting “subsection (g)  
14 and in” after “except as provided in”,

15               (2) in paragraph (38), by striking “respectively,  
16 (A)” and all that follows up to the semicolon at the  
17 end and inserting “the information described in section  
18 1128(b)(9)”, and

19               (3) in paragraph (39)—

20                       (A) by striking “bar” and inserting  
21 “exclude”,

22                       (B) by striking “person” and inserting “indi-  
23 vidual or entity” each place it appears, and

24                       (C) by inserting “or section 1128A” after  
25 “section 1128”.

1        (g) DENIAL OF FEDERAL FINANCIAL PARTICIPATION  
2    UNDER MEDICAID.—Paragraph (2) of section 1903(i) (42  
3    U.S.C. 1396b(i)) is amended to read as follows:

4                “(2) with respect to any amount expended for an  
5                item or service (other than an emergency item or serv-  
6                ice) furnished—

7                        “(A) under the plan by any individual or  
8                entity during any period when the individual or  
9                entity is excluded from participation in the State  
10                plan under this title pursuant to section 1128 or  
11                section 1128A, or

12                        “(B) at the medical direction or on the pre-  
13                scription of a physician, during the period when  
14                such physician is excluded pursuant to section  
15                1128 or section 1128A from participation in the  
16                program under this title and when the person fur-  
17                nishing such item or service knew or had reason  
18                to know of the exclusion (after a reasonable time  
19                period after reasonable notice has been furnished  
20                to the person).”.

21        (h) MEDICAID CONFORMING AMENDMENTS.—(1) Sub-  
22        section (n) of section 1903 (42 U.S.C. 1396b) is repealed.  
23        (2) Paragraph (2) of section 1915(a) (42 U.S.C.  
24        1396n(a)) is amended to read as follows:

1           “(2) restricts for a reasonable period of time the  
2 provider or providers from which an individual (eligible  
3 for medical assistance for items or services under the  
4 State plan) can receive such items or services, if—

5           “(A) the State has found, after notice and  
6 opportunity for a hearing (in accordance with pro-  
7 cedures established by the State), that the individ-  
8 ual has utilized such items or services at a fre-  
9 quency or amount not medically necessary (as de-  
10 termined in accordance with utilization guidelines  
11 established by the State), and

12           “(B) under such restriction, individuals eligi-  
13 ble for medical assistance for such services have  
14 reasonable access (taking into account geographic  
15 location and reasonable travel time) to such serv-  
16 ices of adequate quality.”.

17           (i) TITLE XX.—Section 2005(a) (42 U.S.C. 1397d(a)) is  
18 amended—

19           (1) by striking “or” at the end of paragraph (7),  
20           (2) by striking the period at the end of paragraph  
21 (8) and inserting “; or”, and  
22           (3) by adding at the end thereof the following new  
23 paragraph:

24           “(9) for payment for any item or service (other  
25 than an emergency item or service) furnished—

1                   “(A) by an individual or entity excluded from  
2 participation in the program under this title pursuant  
3 to section 1128 or section 1128A, or

4                   “(B) at the direction or on the prescription of  
5 a physician during the period when the physician  
6 is excluded pursuant to section 1128 or section  
7 1128A from participation in the program under  
8 this title.”.

9                   (j) DENIAL, REVOCATION, OR SUSPENSION OF REGIS-  
10 TRATION TO MANUFACTURE, DISTRIBUTE, OR DISPENSE A  
11 CONTROLLED SUBSTANCE FOR ENTITIES EXCLUDED FROM  
12 THE MEDICARE PROGRAM.—Section 304(a) of the Con-  
13 trolled Substances Act (21 U.S.C. 824(a)) is amended—

14                   (1) by striking “or” at the end of paragraph (3),  
15                   (2) by striking the period at the end of paragraph  
16                   (4) and inserting “; or”, and

17                   (3) by inserting after paragraph (4) the following  
18 new paragraph:

19                   “(5) has been excluded (or directed to be ex-  
20 cluded) from participation in a program pursuant to  
21 section 1128(a) of the Social Security Act.”.

1 SEC. 9. CLARIFICATION OF MEDICAID MORATORIUM PROVI-  
2 SIONS OF DEFICIT REDUCTION ACT OF 1984.

3 Section 2373(c) of the Deficit Reduction Act of 1984  
4 (Public Law 98-369; 98 Stat. 1112) is amended to read as  
5 follows:

6 "(c)(1) The Secretary of Health and Human Services  
7 shall not take any compliance, disallowance, penalty, or other  
8 regulatory action against a State with respect to the morato-  
9 rium period described in paragraph (2) by reason of such  
10 State's plan described in paragraph (5) under title XIX of the  
11 Social Security Act (including any part of the plan operating  
12 pursuant to section 1902(f) of such Act), or the operation  
13 thereunder, being determined to be in violation of clause (IV),  
14 (V), or (VI) of section 1902(a)(10)(A)(ii) or section  
15 1902(a)(10)(C)(i)(III) of such Act on account of such plan's  
16 (or its operation) having a standard or methodology which the  
17 Secretary interprets as being less restrictive than the stand-  
18 ard or methodology required under such section, provided  
19 that such plan (or its operation) does not make ineligible any  
20 individual who would be eligible but for the provisions of this  
21 subsection.

22 "(2) The moratorium period is the period beginning on  
23 October 1, 1981, and ending 18 months after the date on  
24 which the Secretary submits the report required under para-  
25 graph (3).

1       “(3) The Secretary shall report to the Congress within  
2 12 months after the date of the enactment of this Act with  
3 respect to the appropriateness, and impact on States and re-  
4 cipients of medical assistance, of applying standards and  
5 methodologies utilized in cash assistance programs to those  
6 recipients of medical assistance who do not receive cash as-  
7 sistance, and any recommendations for changes in such  
8 requirements.

9       “(4) No provision of law shall repeal or suspend the  
10 moratorium imposed by this subsection unless such provision  
11 specifically amends or repeals this subsection.

12       “(5) In this subsection, a State plan is considered to  
13 include—

14           “(A) any amendment or other change in the plan  
15 which is submitted by a State, or

16           “(B) any policy or guideline delineated in the  
17 Medicaid operation or program manuals of the State  
18 which are submitted by the State to the Secretary,

19 whether before or after the date of enactment of this Act and  
20 whether or not the amendment or change, or the operating or  
21 program manual was approved, disapproved, acted upon, or  
22 not acted upon by the Secretary.

23       “(6) During the moratorium period, the Secretary shall  
24 implement (and shall not change by any administrative

1 action) the policy in effect at the beginning of such moratori-  
2 um period with respect to—

3           “(A) the point in time at which an institutional-  
4        ized individual must sell his home (in order that it not  
5        be counted as a resource); and

6           “(B) the time period allowed for sale of a home of  
7        any such individual,

8 who is an applicant for or recipient of medical assistance  
9 under the State plan as a medically needy individual (de-  
10 scribed in section 1902(a)(10)(C) of the Social Security Act)  
11 or as an optional categorically needy individual (described in  
12 section 1902(a)(10)(A)(ii) of such Act).”.

13 **SEC. 10. LIMITATION OF LIABILITY OF MEDICARE BENEFICI-  
14           ARIES WITH RESPECT TO SERVICES FUR-  
15           NISHED BY EXCLUDED INDIVIDUALS AND  
16           ENTITIES.**

17        Title XVIII is amended by adding at the end the follow-  
18 ing new section:

19        **“LIMITATION OF LIABILITY OF BENEFICIARIES WITH RE-  
20           SPECT TO SERVICES FURNISHED BY EXCLUDED INDI-  
21           VIDUALS AND ENTITIES**

22        **“SEC. 1890. Where an individual eligible for benefits  
23 under this title submits a claim for payment for items or serv-  
24 ices furnished by an individual or entity excluded from par-  
25 ticipation in the programs under this title, pursuant to section  
26 1128, 1128A, 1156, 1160 (as in effect on September 2,**

1 1982), 1862(d) (as in effect on the date of the enactment of  
2 the Medicare and Medicaid Patient and Program Protection  
3 Act of 1987), or 1866, and such beneficiary did not know or  
4 have reason to know that such individual or entity was so  
5 excluded, then, to the extent permitted by this title, and not-  
6 withstanding such exclusion, payment shall be made for such  
7 items or services. In each such case the Secretary shall notify  
8 the beneficiary of the exclusion of the individual or entity  
9 furnishing the items or services. Payment shall not be made  
10 for items or services furnished by an excluded individual or  
11 entity to a beneficiary after a reasonable time (as determined  
12 by the Secretary in regulations) after the Secretary has noti-  
13 fied the beneficiary of the exclusion of that individual or  
14 entity.”.

15 **SEC. 11. DEFINITION OF PERSON WITH OWNERSHIP OR**  
16 **CONTROL INTEREST.**

17 Section 1124(a)(3)(A)(ii) (42 U.S.C. 1320a-  
18 3(a)(3)(A)(ii)) is amended by striking “\$25,000 or”.

19 **SEC. 12. CONDITIONAL APPROVAL OF RENAL DIALYSIS**  
20 **FACILITIES.**

21 Section 1881 (42 U.S.C. 1395rr) is amended by adding  
22 at the end the following new subsection:  
23 “(h)(1) In any case where the Secretary—

1           “(A) finds that a renal dialysis facility is not in  
2           substantial compliance with requirements for such fa-  
3           cilities prescribed under subsection (b)(1)(A),

4           “(B) finds that the facility’s deficiencies do not im-  
5           mediately jeopardize the health and safety of patients,  
6           and

7           “(C) has given the facility a reasonable opportu-  
8           nity to correct its deficiencies,

9           the Secretary may, in lieu of terminating approval of the fa-  
10           cility, determine that payment under this title shall be made  
11           to the facility only for services furnished to individuals who  
12           were patients of the facility before the effective date of the  
13           notice.

14           “(2) The Secretary’s decision to restrict payments under  
15           this subsection shall be made effective only after such notice  
16           to the public and to the facility as may be prescribed in regu-  
17           lations, and shall remain in effect until (A) the Secretary finds  
18           that the facility is in substantial compliance with the require-  
19           ments under subsection (b)(1) (A), or (B) the Secretary termi-  
20           nates the agreement under this title with the facility.

21           “(3) A facility dissatisfied with a determination by the  
22           Secretary under paragraph (1) shall be entitled to a hearing  
23           thereon by the Secretary (after reasonable notice) to the same  
24           extent as is provided in section 205(b), and to judicial review

1 of the Secretary's final decision after such hearing as is pro-  
2 vided in section 205(g).".

3 **SEC. 13. AMENDMENT RELATING TO FRAUD INVOLVING MEDI-**  
4 **CARE SUPPLEMENTAL INSURANCE.**

5 Section 1882(d)(1) (42 U.S.C. 1395ss(d)(1)) is amended  
6 by striking "knowingly or willfully" and inserting "knowing-  
7 ly and willfully".

8 **SEC. 14. STANDARDS FOR ANTI-KICKBACK PROVISIONS.**

9 (a) **REGULATIONS.**—The Secretary of Health and  
10 Human Services, in consultation with the Attorney General,  
11 not later than 1 year after the date of the enactment of this  
12 Act shall publish proposed regulations, and not later than 2  
13 years after the date of the enactment of this Act shall pro-  
14 mulgate final regulations, specifying payment practices that  
15 shall not be treated as a criminal offense under section  
16 1128B(b) of the Social Security Act and shall not serve as  
17 the basis for an exclusion under section 1128(b)(7) of such  
18 Act. Any practices specified in regulations pursuant to the  
19 preceding sentence shall be in addition to the practices de-  
20 scribed in subparagraphs (A) through (C) of section  
21 1128B(b)(3).

22 (b) **CRIMINAL VIOLATION.**—Section 1128B(b)(3), as  
23 amended and redesignated by section 4 of this Act, is further  
24 amended—

5 (3) by adding at the end thereof the following new  
6 subparagraph:

7           “(D) any payment practice specified by the Secre-  
8        tary in regulations promulgated pursuant to section  
9        15(a) of the Medicare and Medicaid Patient and Pro-  
10      gram Protection Act of 1987.”.

## 11 SEC. 15. EFFECTIVE DATES.

12        (a) IN GENERAL.—Except as provided in subsections  
13 (b), (c), (d), and (e), the amendments made by this Act shall  
14 become effective at the end of the fourteen-day period begin-  
15 ning on the date of the enactment of this Act and shall not  
16 apply to administrative proceedings commenced before the  
17 end of such period.

18 (b) MANDATORY MINIMUM EXCLUSIONS APPLY PRO-  
19 SPECTIVELY.—Section 1128(c)(3)(B) of the Social Security  
20 Act (as amended by this Act), which requires an exclusion of  
21 not less than five years in the case of certain exclusions, shall  
22 not apply to exclusions based on convictions occurring before  
23 the date of the enactment of this Act.

24 (c) EFFECTIVE DATE FOR CHANGES IN MEDICAID  
25 LAW.—(1) The amendments made by sections 5 and 8(f)

1 apply (except as provided under paragraph (2)) to payments  
2 under title **XIX** of the Social Security Act for calendar quar-  
3 ters beginning more than thirty days after the date of the  
4 enactment of this Act, without regard to whether or not final  
5 regulations to carry out such amendment have been published  
6 by such date.

7 (2) In the case of a State plan for medical assistance  
8 under title **XIX** of the Social Security Act which the Secre-  
9 tary of Health and Human Services determines requires  
10 State legislation (other than legislation appropriating funds)  
11 in order for the plan to meet the additional requirements im-  
12 posed by the amendments made by this Act, the State plan  
13 shall not be regarded as failing to comply with the require-  
14 ments of such title solely on the basis of its failure to meet  
15 these additional requirements before the first day of the first  
16 calendar quarter beginning after the close of the first regular  
17 session of the State legislature that begins after the date of  
18 the enactment of this Act.

19 (3) Subsection (j) of section 1128A of the Social Securi-  
20 ty Act (as added by section 3(f) of this Act) takes effect on  
21 the date of the enactment of this Act.

22 (d) **PHYSICIAN MISREPRESENTATIONS.**—Clauses (ii)  
23 and (iii) of section 1128A(a)(1)(C) of the Social Security Act,  
24 as amended by section 3(a)(1)(F) of this Act, apply to claims  
25 presented for services performed on or after the effective date

1 specified in subsection (a), without regard to the date the  
2 misrepresentation of fact was made.

3 (e) CLARIFICATION OF MEDICAID MORATORIUM.—

4 The amendments made by section 9 of this Act shall apply as  
5 though they were originally included in the enactment of sec-  
6 tion 2373(c) of the Deficit Reduction Act of 1984.

7 (f) TREATMENT OF CERTAIN DENIALS OF PAY-  
8 MENT.—For purposes of section 1128(b)(8)(B)(iii) of the  
9 Social Security Act (as amended by section 2 of this Act), a  
10 person shall be considered to have been excluded from par-  
11 ticipation under a program under title XVIII if payment to  
12 the person has been denied under section 1862(d) of the  
13 Social Security Act, as in effect before the effective date  
14 specified in subsection (a).

Passed the House of Representatives June 2, 1987.

Attest: DONNALD K. ANDERSON,

*Clerk.*



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